**THE HON'BLE SRI JUSTICE C.V. RAMULU**

W.P.No.3987 of 2000

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**ORAL ORDER:**

This writ petition is filed seeking a Mandamus declaring the order passed by the first respondent in Case No.F1/6387/95 dated 26.7.1999 arising out of Occupancy Certificate dated 5.9.1989 in File No.L/366/89 on the file of second respondent as arbitrary and illegal.

It appears, petitioners and unofficial respondents are tenants of original Inamdar. On 7.9.1979, Occupancy Right Certificate was conferred under Inams Abolition Act in favour of petitioners' paternal uncle and the land to an extent of Ac.2-10 guntas in Sy.No.98 and Ac.3-15 guntas in Sy.No.99 situated at Alwal village and Municpality, Ranga Reddy district had fallen to the share of petitioners in the family partition. The second respondent also passed orders dated 5.9.1989 for mutating the names of petitioners as occupants in respect of the above lands. According to the father of respondents 4 and 5 Mr.Veeraiah, the land to an extent of Ac.0-28 guntas, which constitutes part of Survey No.100, was in fact physically located in Sy.No.99. Therefore, he filed appeal before the first respondent on 3.8.1995 being aggrieved by the order passed by the second respondent. The first respondent vide impugned order dated 26.7.1999 in Case No.F1/6387/95 while allowing the appeal, gave a finding that on the basis of panchanama purported to have been conducted by the surveyor and the statement said to have been issued by the inamdar, that this land of Ac.0-28 guntas is physically confirms part of Sy.No.99 and not Sy.No.100 and, thus declared that the said land of Ac.0-28 guntas in Sy.No.99 which was construed to be fallen in Sy.No.100 belongs to Veeraiah. Aggrieved thereby, the present writ petition is filed.

The learned counsel appearing for petitioner Mr.K.Mahipathy Rao strenuously contended that mere panchanama conducted by the surveyor

on the basis of statement purported to have been made by the inamdar, could not have been taken into consideration for deciding the substantial rights of the parties.

Whereas the learned counsel appearing for respondents Mrs.Neeraja Sudhakar Reddy contended that once panchanama is conducted and the original inamdar has made a statement, it must be deemed that the land physically had fallen in Sy.No.99 and noting althrough that it had fallen in Sy.No.100 is a misconception and mistake of fact. Therefore, the appellate authority rightly corrected the same and gave a finding as per law.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

Admittedly, the Occupancy Right Certificate was issued in the year 1979 in respect of land of Ac.2-10 guntas in Sy.No.98 and Ac.3-15 guntas in Sy.No.99 situated at Alwal village and Municpality, Ranga Reddy district and the petitioners were shown as possesors. Therefore, the second respondent, after partition of properties between the family members of petitioners passed orders in the year 1989 for registering the names of petitioners as occupants. When it came to light that some land, which was in physical possession of the respondents, was part and parcel of Survey No.99 and not Sy.No.100, the respondents filed appeal before the first respondent. It is unfortunate that the first respondent has not conducted any fresh enquiry into the matter nor ordered for survey. Simply, on the basis of panchanama, which merely indicates that Veeraiah is in possession of Ac.0-10 guntas of land and cultivated leafy vegetable and in Ac.0-18 guntas existed a well, three rooms and nine tamarind trees in Sy.No.99, held that the said land belongs to Veeraiah. Such a casual finding recorded by the first respondent could not have formed part of decision of this nature. The substantial rights of the parties have to be decided after conducting a

detailed enquiry as to revenue entries as well as survey conducted by the competent authority. May be, the father of respondents 4 and 5 was in physical possession of the disputed land, but unless and until a fresh survey is conducted in this regard as to location of land held by the respondents 4 and 5 in the presence of petitioners as well as respondents 4 and 5, the substantial rights of the parties could not have been decided by the first respondent in a casual way.

Under those circumstances, I am of the opinion that the impugned order passed by the appellate authority is liable to be set aside and accordingly set aside. The matter is remanded to the primary authority-second respondent-Revenue Divisional Officer, Chevella Division for conducting fresh enquiry into the matter by appointing an appropriate surveyor for conducting survey of land in the presence of both the parties and after receiving report from the surveyor, the matter shall be disposed of afresh, as per law within a period of eight (8) weeks from the date of receipt of this order. It is needless to mention that this exercise is limited only to the extent of Ac.0-28 guntas of land, which is in dispute between the parties.

The writ petition is accordingly disposed of. No order as to costs.

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C.V.RAMULU, J

Date: 4.6.2009
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